Before the

Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund		WC Docket No. 10-90
	)	

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The National Association of State Utility Consumer Advocates (NASUCA) filed a Petition for Reconsideration[1] of the Third Report and Order, Further Report and Order, and Order on Reconsideration (Broadband Lifeline Order), published in the Federal Register on May 24, 2016. The Pennsylvania Public Utility Commission (Pa PUC), USTelecom, and several others also filed petitions requesting clarification or reconsideration. NASUCA responded to key aspects of the other pending petitions for reconsideration and clarification with its July 29, 2016 Opposition. (NASUCA Opposition).

With an Order as complex in scope and implementation as the Broadband Lifeline Order, the requests for reconsideration and clarification should not be surprising. In resolving the petitions filed by NASUCA and others, NASUCA urges the FCC to take the steps necessary to

[1] NASUCA's Petition for Reconsideration requested reconsideration of the following issues: The decision to remove Lifeline support for stand-alone voice services will force Lifeline customers onto more expensive bundles; the failure to adopt regulations so that customers who cannot afford bundled service will be able to maintain basic voice service; the failure to require that payment arrangements be offered for back-up power for Lifeline customers; and the failure to act now to reform the universal service contribution mechanism to require contribution from broadband services, especially with all Lifeline customers being forcibly migrated to broadband.

restore consumer protections for Lifeline consumers so that they may receive universal service support that assures affordable and reasonably continuous access to voice and/or broadband internet access services. Lifeline service benefits both the enrolled consumer and all others, including public safety officers, schools, medical providers, and family who may need to contact the Lifeline consumer by a voice call, text, e-mail or social media.

A variety of parties filed responses to the petitions for reconsideration and clarification. The Greenlining Institute and seventeen public interest groups filed a joint opposition to two aspects of the industry Petitions for Reconsideration: those that disrupt the ability of eligible customers to participate in Lifeline,[2] and those that weaken or eliminate service quality standards.[3] (Greenlining Joint Opposition). Sacred Wind, an Eligible Telecommunications Carrier offering Tribal Lifeline, filed comments that support NASUCA's request for reconsideration of the phase-out of Lifeline support for voice service.[4] The National Cable & Telecommunications Association (NCTA), Joint Lifeline ETC Respondents, Q Link Wireless, Sprint and TracFone filed comments on some of the Petitions for Reconsideration of the Broadband Lifeline Order. GVNW Consulting's (GVNW's) Opposition reflects the concerns of Rural Incumbent Local Exchange Carriers on the port freeze and other issues.[5] United States Telecom Association (USTelecom) filed an Opposition to the NASUCA and Pa PUC petitions. The absence of a reply or comment by NASUCA in response to initial petitions for clarification or reconsideration or in response to the later filed oppositions or comments of other parties does not signal NASUCA's agreement or support.

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[2] E.g., USTelecom.

[3] E.g., USTelecom, Joint ETC Petitioners, CTAI, TracFone, NCTA/WTA.

[4] Comments of Sacred Wind on Petitions for Reconsideration, at 4-6.

[5] See GVNW at 2, 3, 5, 6 (two items), 7, 9.

NASUCA supports the consumer protection concerns laid out in the Greenlining Joint Opposition. Consistent with NASUCA's position, the Greenlining Joint Opposition opposes an across-the-board delay in implementation of those provisions of the Broadband Lifeline Order that would allow Lifeline consumers to apply Lifeline support to the broadband service.[6] Also consistent with NASUCA's position, the Greenlining Joint Opposition objects to the USTelecom request that the last Lifeline provider in a census block be relieved of the obligation to offer Lifeline voice service.[7] Lifeline consumers should always have an option for voice service from an ETC. The statutory process for relinquishment of ETC obligations should not be disturbed. The other consumer protection concerns raised by the Greenlining Joint Opposition are also supported by NASUCA. If – in the absence of reconsideration as requested by USTelecom and discussed below -- a Lifeline consumer subscribes to broadband service and is obligated to a twelve-month term, the ETC or Lifeline Broadband Provider should not be able to reduce the quality or quantity of services provided during that term, particularly in light of the Commission's restriction on the ability of the Lifeline consumer to port or switch to another provider and keep the Lifeline support.[8]

USTelecom has asked for reconsideration of the Lifeline Broadband Order's adoption of a freeze on the ability of Lifeline consumers to port service (the 12-month restriction by Lifeline broadband consumers on porting and 60-day restriction on porting by Lifeline voice consumers), as well as the limitation on changes to Lifeline broadband Internet access service (BIAS) service offerings.[9] NASUCA's Opposition signaled agreement with USTelecom's procedural

[6] See NASUCA Opposition at 2-3.

[7] Id. at 4.

[8] Id. at 4-5; see Lifeline Broadband Order, Para. 391.

[9] USTelecom Petition for Reconsideration, at iii, 4-7.

concerns.[10] GVNW supports the request for reconsideration. The Joint Lifeline ETC Respondents contend that the Commission did provide sufficient notice and, if notice of the proposed regulatory action was deficient, that the resulting harm was de minimis.[11] To buttress its position, the Joint Lifeline ETC Respondents offer substantive reasons why a 12-month restriction on the ability of Lifeline broadband consumers to switch to another provider is beneficial to the Joint Lifeline ETC Respondents.

NASUCA urges the Commission to grant USTelecom's request for reconsideration on this limited, critical issue. While the Lifeline Broadband Order suggests that Lifeline consumers will be better off if ETCs and Lifeline broadband providers (LBPs) know that they will have a captive Lifeline customer for 12 months (BIAS) or 60-days (voice), the Lifeline Broadband Order does not address how universal service is promoted if a Lifeline customer loses supported service due to a missed payment for the out-of-pocket cost of service. [12] Disruptions in service and higher costs to the Lifeline consumer are likely outcomes of the port freeze, as the ETC or LBP is provided with leverage to require payment of all past due amounts just so the consumer might receive the remaining months of broadband service with Lifeline support. [13] NASUCA opposes the institution of this process for the benefit or ETCs and LBPs, which will reduce the ability of Lifeline consumers to afford and maintain continuous communications service.

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[10] NASUCA Opposition at 1, fn. 4.

[11] Joint Lifeline ETC Respondents Opposition at 2-9.

[12] GVNW disagrees with the Lifeline Broadband Order's justification for the port freeze, observing that:

> It is just as likely that customers will be enticed into signing up for less affordable service through the offering of free or low cost service for the initial month(s) and then, because of the port freeze, find themselves locked into an uneconomic contract for the remaining months of the year-long freeze. It is a strange economic proposition that the Commission contends that competition will be enhanced by limiting consumer choice. Lifeline customers should have the same ability to find a better deal, either with a higher level of service or lower price, as customers not eligible to access the Lifeline discount.

GVNW Opposition at 8.

[13] GVNW Opposition at 8-9.

The Joint ETC Respondents' position that any deficiency in administrative notice has been harmless is incorrect. NASUCA has requested reconsideration of the Lifeline Broadband Order's proposed phase out of support for voice service based on concern that Lifeline consumers will be pushed to broadband service with out-of-pocket costs and bundled offers. The Lifeline Broadband Order's port freeze compounds the problem, by restricting the ability of the Lifeline consumer to reevaluate Lifeline service offerings and switch to a more affordable Lifeline service. The Commission should grant reconsideration of these intertwined issues, so that the interests of Lifeline consumers in obtaining and keeping supported services – whether voice or broadband – are adequately considered and protected.

GVNW and USTelecom opposed the NASUCA request that the Commission reconsider the Lifeline Broadband Order and provide Lifeline consumers with affordable options for battery back-up. GVNW disputes NASUCA's position that the Lifeline Broadband Order is incomplete and does not adequately address the consumer and public safety concerns associated with movement towards broadband based communications. USTelecom asserts that the Commission's decision regarding the battery back-up needs of the general population is conclusive and binding. NASUCA strongly disagrees with these arguments.[14] Clearly, Lifeline support for broadband does not serve the public interest if the Lifeline consumer lacks or cannot obtain on affordable terms back-up power for his or her computer, tablet, smart phone or other broadband-enabled device. If commercial power is out and there is no battery back-up power available, a broadband cable connection or fixed wireless device is rendered useless. If large numbers of customers are unable to afford back-up power, this poses a threat to public safety.

[14] NASUCA's Petition for Reconsideration of the Commission's July 2015 Tech Transition decision making backup power an option at the customer's expense is still pending. Joint Petition of NASUCA, the Benton Foundation, Maryland Office of Peoples Counsel, Public Knowledge et al, for Reconsideration, filed Nov. 16, 2015, *In the Matter of Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, Report and Order, FCC 15-98 (August 7, 2015).

The NASUCA Petition for Reconsideration urged the Commission to address this issue to assure continuity of Lifeline service. GVNW objects that "many customers do not see the need for back-up power since they have wireless battery-powered options…."[15] It is counter-intuitive to assume that Lifeline consumers have redundant options for communications, such as a landline and wireless service or broadband-enabled voice service and wireless, in the event of disasters or power outages. The upfront cost of acquiring adequate back-up power options is the precise reason why NASUCA has asked the Commission to reconsider and take steps to provide these low-income customers with payment arrangements or otherwise make battery back-up service more affordable. Contrary to GVNW's assertion, such payment arrangements are not "price regulation not authorized by the Communications Act."[16] Such arrangements are not price regulation any more than the Lifeline discount itself. Indeed, the current discount on installation charges,[17] like payment arrangements for back-up power, are well within the FCC's power under § 254. GVNW also claims, without support, that funding back-up power would create a "large drain" on the Lifeline fund.[18] The benefits of funding back-up power, or requiring payment arrangements, outweigh the costs.

USTelecom has asked the Commission to deny the Pa PUC petition in its entirety. NCTA also opposed the Pa PUC's petition for clarification, on the point of whether states should be allowed to impose operational requirements on "federally-designated" LBPs. NCTA asks the FCC to decide against the Pa PUC because the FCC has decided that BIAS is jurisdictionally interstate. Sprint agrees with the Pa PUC that clarification is appropriate.[19]

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[15] GVNW at 9.

[16] Id.

[17] See https://transition.fcc.gov/wcb/tapd/universal_service/lowincome.html.

[18] Id.

[19] Sprint at 1, 10.

NASUCA has already stated its support for the Pa PUC's petition that carefully maps out the need for clarification by the Commission of the respective roles of the Commission and states – both state utility commissions and attorneys general – in assuring that Lifeline consumers receive supported service consistent with the Commission's standards and as advertised.[20] Contrary to USTelecom and NCTA's comments, the pivotal concern is not the jurisdictional status of BIAS or the federal designation of LBPs. The Pa PUC petition is directed at assuring Lifeline consumers receive service of sufficient quality and quantity from providers – whether ETCs or LBPs – and that the legal framework to protect the interests of both Lifeline consumers and consumers who pay to support the Federal Universal Service Fund is robust, efficient, and not subject to gaps. NASUCA supports the Pa PUC's Petition, including its alternative position that, at a minimum, LBPs should be required to register with the states.[21]

Portions of TracFone's comments indirectly support the NASUCA Petition for Reconsideration on the issue of continuation of Lifeline support for voice service and concern that Lifeline consumers should have robust access to 911 and public safety services. However, NASUCA's Petition for Reconsideration asks the Commission to grant reconsideration and to assure that whether a consumer opts for Lifeline voice or Lifeline broadband, in either case the Lifeline consumer has a greater ability to preserve continuity of communications with affordable battery back-up options.

NASUCA reiterates its opposition to the phase-out of support for stand-alone voice service,[22] and also supports the comments of those that also oppose the phase-out. Retaining stand-alone voice as a Lifeline-eligible service on a network designed for broadband is beneficial

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[20] NASUCA Opposition at 1-2, fn 4.

[21] Pa PUC at 2.

[22] See NASUCA Petition for Reconsideration (June 26, 2106) at 3-4.

to both customers and carriers. This is important to customers who do not desire to purchase broadband or, if forced to purchase a more costly and unaffordable bundle (even with the Lifeline discount), would run the risk of having all telecommunications service disconnected due to the inability to pay. Carriers would benefit from additional revenue received from customers who otherwise might not purchase service at all, which would contribute to the recovery of fixed costs. Carriers would further benefit from the fact that by having the customer on the network, a relationship is established with the customer, who may purchase other services as a Lifeline customer and/or experience income increases that takes the customer off Lifeline, and thus give Carriers the potential to earn more revenues.

Respectfully submitted,

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August 8, 2016